

EXHIBIT 7
DATE 2/6/07
HB 265

Bob Ebinger

From: Tara DePuy [civilattorney@parkcounty.org]
Sent: Wednesday, January 24, 2007 6:54 AM
To: 'Bob Ebinger'
Cc: 'Robert Jovick'
Subject: ~~Local Option Tax~~

HB 265

Bob,

Mr. Stahl is incorrect. The Planning Board/County cannot by resolution set its own rules for a quorum or a majority. This would be contrary to state law and subject a city/county to litigation.

The Planning Board has very specific statutes that guide its conduct. These statutes are set forth in Section 76-1-101, et seq.

County administrative boards can set their own rules for a quorum or majority. Section 7-1-201(11) states:

A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting, unless the resolution creating the board, district or commission specifies otherwise.

A Planning Board is **not** an administrative board. Administrative boards are set forth in Section 7-1-202 and include those I listed yesterday (fair, museum, solid waste, etc.) and other boards **not otherwise provided for by law**. The Planning Board is otherwise provided for by law in Section 76-1-101, et seq.

My point yesterday is that a Planning Board is similar to an administrative board in that they both make recommendations to a City or County Commission. But beyond that, they are not similar.

I would characterize a Planning Board as a quasi-judicial board in that they are more like a court; they can only consider what is presented to them during the hearing and they must apply laws to their recommendations. That is why ex-parte contact is now allowed between the public and planning board members/Commission members. State law has very clearly held that a Commission when hearing subdivisions is acting in a quasi-judicial role, again for the reasons that they can only consider what record was created at the Planning Board level; new information is not allowed. This also provides the Planning Board and County Commission quasi-judicial immunity for their acts when approving subdivisions.

Hope that helps.

Tara

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From: Bob Ebinger [mailto:buffalojump@ycsi.net]
Sent: Tuesday, January 23, 2007 8:22 PM
To: 'Tara DePuy'
Subject: [SPAM] RE: Local Option Tax

1/24/2007